IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1104 of 2007

Deena alias Dinesh Kumar .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Home, Prohibition & Excise Department
Fort St.George, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District
Vellore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus directing the respondents to call for records in C#.No. 125/2006, dated 15.11.2006 passed by the second respondent approved and confirmed by the first respondent and set aside the same and direct the respondents to produce the body of this petitioner viz., Deena @ Dinesh Kumar who has been detained and confined in the Central prison a Vellore in T.P.D.A.No. 5704 before this Hon'ble Court and set this detenue Deena @ Dinesh Kumar at liberty.

For Petitioner : Mr.T.R.Radhakrishnan
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the petitioner, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

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2.1. The order of detention dated 15.11.2006 came to be passed by the second respondent on the basis of the ground case in Crime No.492 of 2006 on the file of Vellore North Crime Police Station for the offences punishable under Sections 341, 394 and 506(ii) IPC, complaint of which was given by one Babu. On 20.8.2006 at 7.00 hours, the Inspector of Police, Vellore North Crime (L&O) Police Station received message over phone and he rushed along with police party to National Threatre Junction Road, Vellore, where he noticed the petitioner armed with pen knife. The Inspector of Police arrested the petitioner and seized pen knife, cash and wrist watch. The Sub Inspector of Police brought the victim, Babu to the police station. The victim gave a statement. He stated that on 20.8.2006 at about 6.45 hours, the detenu waylaid him and pointing knife over the neck, demanded money and threatened to kill him. The petitioner took away Rs.130/- from shirt pocket of the complainant and also his wrist watch. As the complainant shouted, the petitioner stabbed him with pen knife and inflicted bleeding injury. The nearby public came towards the complainant, but the petitioner threatened them. Due to this the public ran in all directions and the traffic was paralysed. The police came to the spot and arrested the petitioner.

2.2. Apart from the above, the detaining authority also took note of eight adverse cases pending against the detenu, viz., Crime Nos.80, 81 and 124 of 2002 on the file of the Vellore South Crime Police Station for the offences punishable under Sections 457, 380 read with 511 IPC; Crime Nos.621, 646, 647 and 677 of 2004 on the file of the Viruthambut Police Station for the offences punishable under Sections 379, 457, 380 read with 511 IPC; and Crime No.491 of 2006 on the file of the Vellore North Crime Police Station for the offences punishable under Sections 457, 380 read with 75 IPC.

2.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. Challenging the said detention, the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records in C3.D.O.No.125/2006, dated 15.11.2006 passed by the second respondent, approved and confirmed by the first respondent, to set aside the same and to direct the respondents to produce him, now detained and confined in the Central Prison at Vellore, in TPDA No.5704, before this Court and to set him at liberty.

4. Heard Mr.T.R.Radhakrishnan, learned counsel for the petitioner and Mr.N.R.Elango, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the

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petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

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7. In the instant case, the impugned order of detention came to be passed on 15.11.2006. A representation was made to the Government on 23.7.2007 and the same was received by it 25.7.2007. Remarks were called for from the detaining authority on 26.7.2007. The detaining authority called for remarks from the sponsoring authority on 26.7.2007 itself, but the remarks of the sponsoring authority were received only on 6.8.2007, viz., after a delay of 6 days, excluding 28.7.2007, 29.7.2007, 4.8.2007 and 5.8.2007 being public holidays. Moreover, after obtaining the remarks of the Sponsoring Authority, the detaining authority sent a report to the Government on 8.8.2007, but the same was received by the Government only on 16.8.2007, viz., after a delay of 5 days, excluding 11.8.2007, 12.8.2007 and 15.8.2007. Thereafter, the file was considered by the Under Secretary, the Additional Secretary and the Hon'ble Minister for P.W.D. and Law and the rejection letter was prepared and sent on 24.8.2007, but the rejection letter was served to the detenu only on 30.8.2007, viz., after a delay of 4 days, excluding 25.8.2007 and 26.8.2007. The delay in considering the representation, as indicated above, on three occasions was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed on three occasions. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

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The delay on three occasions which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 15.11.2006 is set aside. The detenu is directed to be set at liberty forthwith unless his custody is required in connection with any other case.

sasi/sra

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Secretary to Government
   State of Tamilnadu
   Home, Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate
   and District Collector
   Vellore District,Vellore.

3. The Superintendent,
   Central prison, Vellore.

4. The Joint Secretary to Govt,
   Public (Law & Order)
   Fort St George, Chennai-9.

5. The Public Prosecutor
   High Court, Madras.

KM (co)
sg 19/11/07

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